

## COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

February 6, 2015

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20225

Dear Commissioner Koskinen,

As Chairman of the Ways and Means Subcommittee on Oversight, I believe the American people are entitled to demand excellence from federal employees, and it is my responsibility to ensure the Internal Revenue Service (IRS) is using best practices to hire and retain excellent employees. As you know, the Treasury Inspector General for Tax Administration (TIGTA) recently released an audit report, "Additional Consideration of Prior Conduct and Performance Issues Is Needed When Hiring Former Employees" (December 30, 2014)(TIGTA Report), that found the IRS rehired hundreds of former employees who previously had performance or conduct issues, including mishandling of taxpayer information. I am writing to enquire why prior IRS conduct and performance issues do not—as the IRS itself represented to TIGTA—play a significant role in deciding whether a candidate is qualified for rehiring.

One of the IRS's most significant responsibilities is the safeguarding of confidential taxpayer information. Agency employees are entrusted with taxpayers' personal data, like Social Security Numbers and earnings, and, in the case of organizations, donor information. While the law forbids unauthorized disclosure of such information, the risk to taxpayers is not merely theoretical – it has been demonstrated in recent years as some organizations like the National Organization for Marriage have seen their confidential tax information leaked to the press. Despite this real risk, TIGTA noted in its report that the Agency rehired eleven individuals who had previously engaged in unauthorized use of taxpayer accounts.

The risk to taxpayers does not end there. TIGTA's report demonstrates what small business owners across America already know: past performance and misconduct issues are predictive of future performance and conduct. TIGTA examined the records of over 300 former IRS employees with previous performance issues at the IRS that were rehired by the agency. Nearly 20 percent of these employees had new conduct or performance

issues after being rehired, including attempted unauthorized access to sensitive taxpayer information.

The report also suggests miscommunication and mismanagement. The Chief of the IRS's Processing Division went so far as to write, "do not rehire" in the file of a former employee who had been absent without leave from the IRS for a total of 312 hours. Despite the Chief's warning, the individual was rehired. This is not an operational risk unknown to the IRS. In September 10, 2014, the Committee wrote to ask about the case of an employee who falsely claimed to have worked an entire year, but was not formally disciplined. See Attachment.

Particularly troubling was the IRS's apparent conclusion that it could NOT fully consider prior conduct and performance issues in hiring. TIGTA recommended that the IRS work with its legal counsel (General Legal Services) to determine whether and when in the hiring process those factors, which any other employer would consider important if not dispositive, could be considered. The IRS agreed with the recommendation but then concluded:

General Legal Services advised the IRS that suitability criteria may not be used to exclude best qualified candidates from the list of candidates shared with the hiring managers. It agreed that applicant suitability is appropriately conducted at the end of the hiring process prior to a final job offer.

Additionally, while it did find that a review of performance and conduct issues could be accomplished earlier in the process, the Department of the Treasury, OPM, and the IRS believed that it was not feasible to move the review of these issues to earlier in the hiring process.<sup>1</sup>

Common sense would suggest that prior conduct and performance is part of determining whether a candidate is qualified, but unclear from the IRS response is whether these considerations are considered at any point.

To help the Committee evaluate the IRS's hiring practices, please provide the following information by February 20, 2015:

1. Of the 11 employees who were found to have engaged in unauthorized use of taxpayer accounts, how many:
  - a. were found to be in violation of Internal Revenue Code Section 7213 (unauthorized disclosure)?
  - b. were found to be in violation of Internal Revenue Code Section 7213(A) (unauthorized browsing)?
2. With reference to TIGTA Recommendation 1 and IRS's response, does the IRS consider prior conduct and performance issues before an offer is made to a

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<sup>1</sup> TIGTA Report at 6-7.

candidate and, if not, why not?

3. What is the IRS's policy regarding explicit recommendations related to a former employee's record, such as "do not rehire?"
4. The TIGTA Report stated that notwithstanding IRS' representations that it had "revamped its [hiring] process in 2012," there was concern that the, "that the IRS needs to reassess its current processes to more fully consider prior conduct and performance issues before rehiring employees." <sup>2</sup> Do you agree or disagree with TIGTA's concern?

Thank you in advance for your assistance in this matter. If you have any questions, please contact Committee staff at 202-225-5522.

Sincerely,



PETER ROSKAM

Chairman

Subcommittee on Oversight

Attachment

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<sup>2</sup> TIGTA Report at 7.

CHARLES W. BOUSTANY, JR., LOUISIANA  
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**Congress of the United States**  
**House of Representatives**

**COMMITTEE ON WAYS AND MEANS**

WASHINGTON, DC 20515

**SUBCOMMITTEE ON OVERSIGHT**

September 10, 2014

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Koskinen,

I have ongoing concerns with the amount of time and money the IRS spends annually on National Treasury Employees Union (NTEU) activity. The IRS has estimated that in Fiscal Year 2013, the agency spent over \$20 million and over 500,000 work hours on union activity.<sup>1</sup> At a February 5, 2014 Oversight Subcommittee hearing, you said, "there is a significant amount of union activity that is important and is legitimate and deserves to be supported."<sup>2</sup> This, at a time when the IRS claims it is unable to perform required duties as a result of it being understaffed and underfunded.

The Committee recently uncovered a 2011 email that illustrates the extent to which the union inhibits progress and efficiency within the IRS. In the email, Lois Lerner wrote to colleagues that she "learned that [an] employee who is assigned to a special project has spent most of the last year doing nothing and reporting to her manager and on timesheets that she has been working on the project full time."<sup>3</sup> At the time, this employee was based in Washington, DC and as a GS-14, received a salary from \$106,263 to \$138,136.<sup>4</sup>

No small business in America could keep its doors open if it paid employees for doing nothing. An employee that sought payment for work claimed, but never performed would be subject to severe disciplinary action, if not immediate termination. At the IRS,

<sup>1</sup> May 5, 2014 email from IRS staff to Committee staff.

<sup>2</sup> House Committee On Ways and Means, Subcommittee on Oversight. "Hearing with IRS Commissioner Koskinen." February 5, 2014.

<sup>3</sup> IRS0000757430

<sup>4</sup> IRS0000757446

however, the NTEU protects underperforming employees. Lerner lamented that “we can’t do anything” about the employee, and although some argued for termination, Lerner settled for lowering the employee’s performance rating to avoid confrontation with the union.<sup>5</sup> It is alarming that government employees can do no work for an entire year and not be fired, simply because of their union protection.

To help the Committee ensure that the IRS is appropriately handling personnel issues, and that taxpayers’ dollars are not being wasted, please provide the following information by September 23, 2014:

1. For the period between 2009 and the present:
  - a. In how many instances have employees been cited, admonished or disciplined in any manner for falsely claiming to have performed work paid for by taxpayers?
  - b. Provide the facts of each instance, including the employee’s job title, whether and to what extent the employee was disciplined, whether the employee was an NTEU member, and any relevant NTEU input in the matter.
2. What is the IRS’ policy regarding employees that falsely claim to have performed work?

Thank you in advance for your assistance in this matter. If you have questions, please contact Committee staff at 202-225-5522.

Sincerely,

A handwritten signature in blue ink, appearing to read "C.W. Boustany Jr.", with a stylized flourish at the end.

CHARLES BOUSTANY Jr., MD  
Chairman

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<sup>5</sup> IRS0000757430